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November 9, 2018

BY ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

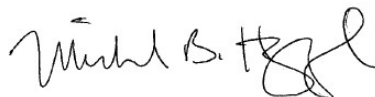
Re: Notice of *Ex Parte* Presentations, CG Docket Nos. 18-152 and 02-278

Dear Ms. Dortch:

On November 8, 2018, T.J. Thinakaran, Chief Operating Office of CallFire, Inc. (“CallFire”) conducted three meetings with representatives of the Federal Communications Commission (“FCC”). Kaytlin L. Roholt and I represented CallFire at the meetings. The first meeting was with the following individuals from the Consumer and Governmental Affairs Bureau: Patrick Webre, Daniel Margolis, Karen Shroeder, Kurt Shroeder, Mark Stone, and Kristi Thornton (via telephone). The second meeting was with Zenji Nakazawa, Chairman Pai’s Public Safety and Consumer Protection Advisor. The third meeting was with Travis Litman, Commissioner Rosenworcel’s Chief of Staff and Senior Legal Advisor, Wireline and Public Safety.

During each of the meetings, CallFire discussed its comments filed in the above-referenced proceedings, and the attached presentation served as the basis of discussion. If you have any questions or need additional information, please contact me.

Respectfully submitted,



Michael B. Hazzard

Counsel to CallFire, Inc.

Attachment

The TCPA and *Marks v. Crunch*

CG Docket Nos. 18-152 and 02-278



Agenda



- Overview of CallFire
- The Ninth Circuit's *Marks v. Crunch* decision wrongly rewrites Congress' definition of ATDS
- The Commission should implement the TCPA's ATDS definition as written by Congress
- Plaintiff's lawyers are abusing existing uncertainty in the law by filing frivolous TCPA lawsuits

The CallFire Story Then & Now...



FOUNDED

2006 by five University of California graduates

EMPLOYEES

Over 155 employees with major offices in Santa Monica, CA and Austin, TX

BEST WORKPLACE

L.A. Business Journal best place to work 5 years in a row

STRONG COMPLIANCE

Business based on complying with all laws and regulations



Strong History of Groundbreaking Innovative Partnerships



Licensed Common
Carrier



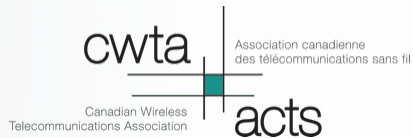
Member, GSMA



RespOrg, SMS|800



Member, CTIA



Member, CWTA



Member, M³AAWG

Key Products



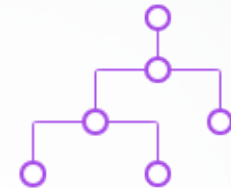
Text Messaging

CallFire Text Messaging provides the most powerful and versatile SMS text messaging platform on the market. Whether you want to send out promotions, discounts, updates or notifications - text marketing lets you reach thousands instantly.



Voice Messaging

CallFire Voice Messaging enables subscribers to send important alerts, promotions, updates, and notifications to customers, employees, voters, and more.



IVR

CallFire IVR (Interactive Voice Response) system, let's subscribers set up surveys, polls, appointment reminders, payments, and more for inbound or outbound uses.

Typical Use Cases

JUST A FEW OF THE WAYS CUSTOMERS USE US...



Appointment Reminders



Product Updates



Emergency Broadcast Message



Shipping Updates



Schedule Coordination



Warranty Services



Security Authentication



Product Recalls



Collections



Paying Bills



Volunteer Canvassing



Reorder Updates



Coupons



Loyalty Programs

Marks v. Crunch Ignores the Text of the Law

- The Ninth Circuit's ATDS definition fails to give effect to key statutory terms and cuts against applicable principles of statutory interpretation
- The statute explicitly uses the phrase “using a random or sequential number generator”; it does not use other phrases, like “using a list of numbers” or “using a database of numbers”
- If Congress wanted to target technology that could call from lists of numbers, it could have included those phrases, but it did not

Marks v. Crunch Ignores the Statutory Intent

- Congress enacted the TCPA to address very specific problems that were caused by the influx of random and sequential numbering technology in the 1990's
- For example, ATDS callers were indiscriminately tying up emergency lines and calling hospital rooms
- Those concerns are not present with technology that can merely call from stored lists of numbers

The Statute Is The Statute

- The Commission should implement the TCPA's ATDS definition as written by Congress
- Congress intentionally enacted a technology-specific ATDS definition; technology has moved on
- Congress, not the FCC, is responsible for rewriting statutes
- *Marks v. Crunch* redlined the statute to cover technology that calls from stored lists of numbers, but in doing so, it swept in millions of smartphones that have this capacity

TCPA Litigation Is Out Of Control

- Multiple courts have found that CallFire's software DOES NOT meet the FCC's 2015 ATDS definition (which the D.C. Circuit held to be overbroad)
- But because of uncertainty in the law, CallFire is still embroiled in wasteful litigation
 - Subpoenaed for a deposition this week by the same lawyer, in the same district where CallFire has already been found not to be an ATDS
 - At least 5 additional third-party subpoenas pending; past individual subpoenas have taken over 100 hours of work

Clear FCC Action Needed

- The FCC should implement that statute as written by Congress
- FCC action should be clear—companies should be able to KNOW whether they are using an autodialer
- Enforcement should target bad actors; not good companies focused on complying with the law
- CallFire is committed to working with the Commission to be part of the solution